

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 544
PROPOSED COMMITTEE SUBSTITUTE S544-PCS35289-RBf-25

Short Title: State Business License.

(Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED
AN ACT TO CREATE A STATE BUSINESS LICENSE FOR SOLE PROPRIETORSHIPS
AND GENERAL PARTNERSHIPS.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 57E.

"State Business License.

"§ 57E-1. Purpose.

The General Assembly finds that most individuals and entities conducting business in North Carolina comply with State statutes regarding taxation, unemployment taxes, and workers' compensation rules. Those individuals and entities that do not comply, however, create an unfair burden on all others. The purpose of this section is to require all individuals and business entities that operate as sole proprietorships or general partnerships to obtain a State business license and register with the Secretary of State. The information obtained by the Secretary of State shall be shared with various State agencies to ensure that these individuals and entities comply with all applicable North Carolina statutes regarding taxation, unemployment taxes, and workers' compensation rules.

"§ 57E-2. Definitions.

The following definitions apply in this Chapter:

- (1) Code. – The Internal Revenue Code as defined in G.S. 105-228.90(b).
- (2) Compensation for services. – Defined in Section 61(a)(1) of the Code and its regulations.
- (3) Doing business. – A sole proprietorship or general partnership shall be deemed to be doing business in this State if the sole proprietorship or the general partnership is responsible for a business that meets any of the following criteria:
 - a. The business has an office or other facility in this State;
 - b. The business owns any tangible personal or real property for business purposes in this State;
 - c. The business pays wages or other remuneration to a person who performs in this State any of the duties for which that person is paid;
or
 - d. The business engages in any transaction for the purpose of financial or pecuniary gain or profit in this State by virtue of the powers and privileges granted by the laws of this State.



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- (4) Federal tax year. – Any period of 12 months for which an individual is required to report income, tax deductions, and tax credits pursuant to the provisions of the Internal Revenue Code and any regulations adopted pursuant thereto.
- (5) General partnership. – Any general partnership, as defined in G.S. 59-36(a), that conducts business in this State if the entity files or is required to file with the Internal Revenue Service a Form 1065, U.S. Return of Partnership Income, or its equivalent or successor form, for that activity as required by subchapter K of the Code. For purposes of this Chapter, general partnership does not include any of the following:
- a. A business organized pursuant to Articles 3B, 4A, and 5 of Chapter 59 of the North Carolina General Statutes.
- b. A government entity.
- c. An unincorporated nonprofit association pursuant to G.S. 59B-2(2) or an organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).
- (6) Gross income derived from business. – Defined in Section 61(a)(2) of the Code and its regulations.
- (7) Individual. – A human being.
- (8) Sole proprietorship. – Any individual who performs a service or engages in a trade for profit in this State if the individual files or is required to file with the Internal Revenue Service (i) a Form 1040 Schedule C, Profit or Loss From Business Form, or its equivalent or successor form, (ii) a Form 1040 Schedule E, Supplemental Income and Loss Form, or its equivalent or successor form, or (iii) a Form 1040 Schedule F, Profit or Loss From Farming Form, or its equivalent or successor form, for any of those activities as required by the Code. For purposes of this Chapter, sole proprietorship does not include any of the following:
- a. A government entity.
- b. An unincorporated nonprofit association pursuant to G.S. 59B-2(2) or an organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).
- c. An individual who operates a business from the individual's home in this State and whose gross receipts from that business are not more than one thousand dollars (\$1,000) in a taxable year.
- (9) State business license. – The license required pursuant to this Chapter.
- "§ 57E-3. State business license required; application and fee for license; activities constituting conduct of business.**
- (a) A sole proprietorship or general partnership shall not conduct a business in this State before the sole proprietorship or general partnership obtains a State business license issued by the Secretary of State.
- (b) An application for a State business license must satisfy all of the following:
- (1) Be made upon a form furnished by the Secretary of State, as prescribed by the Secretary of State.
- (2) Set forth all of the names under which the applicant intends to transact business in this State and all of the locations where a business is operated in this State.
- (3) Set forth the federal Employer Identification Number or the Social Security number, as applicable, under which the applicant intends to transact business in this State.

- (4) Be accompanied by a nonrefundable fee in the amount of one hundred dollars (\$100.00).
- (5) Identify the date the sole proprietorship or general partnership intends to begin conducting business in the State.
- (6) Disclose an e-mail address for the business for notice purposes.
- (7) Indicate, for general partnerships, the name, physical address, and mailing address if different, of a registered agent. Each general partnership must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes.
- (8) Include any other information the Secretary of State deems necessary.
- (c) The effective date of the State business license shall be the date the applicant first conducted business in this State. The period of duration for the State business license shall be 12 months from the effective date of the business license.
- (d) The application must be signed by (i) the sole proprietor, if the business is a sole proprietorship or (ii) by a general partner, if the business is a general partnership.
- (e) A document required or permitted by this Chapter to be filed by the Secretary of State shall be filed in accordance with Article 2 of Chapter 55D of the General Statutes.
- (f) If the application for a State business license is insufficient in any respect or the fee required by this section is not paid at the time of application, the Secretary of State may return the application for correction or payment.
- (g) The State business license required pursuant to this section is in addition to any other licenses or permits required by this State and any license to conduct business that must be obtained from a local jurisdiction in this State.
- (h) Licensees shall update information required by this Chapter within 30 days of any changes by filing an amendment to the registration with the Secretary of State. There shall be no charge for filing an amendment.
- "§ 57E-4. Claim for exemption; exceptions.**
- A sole proprietorship or general partnership that claims to be excluded from the requirement to obtain a State business license and exempt from the requirement to obtain a State business license for any reason must submit annually to the Secretary of State a claim for the exemption on a form provided by the Secretary of State. The Secretary of State may require the individual or entity seeking exempt status to provide any additional information that may be necessary to establish their qualification for such exemption.
- "§ 57E-5. Late fee for failing to obtain State business license before conducting business.**
- A sole proprietorship or general partnership that fails to obtain a State business license and pay the fee required pursuant to G.S. 57E-3(b)(4) before conducting business in this State shall pay a late fee in the amount of one hundred dollars (\$100.00) for every year or part of a year thereafter that the business should have obtained a license. The late fee is in addition to the annual State business license fee that is due for each year or part of a year that business is conducted in the State.
- "§ 57E-6. Limitation on number of licenses a sole proprietor is required to obtain.**
- A sole proprietor is not required to obtain more than one State business license for any combination of activities conducted by that individual that are reported or required to be reported to the Internal Revenue Service for any federal tax year on two or more of the forms described in G.S. 57E-2(5).
- "§ 57E-7. Annual renewal of license; fee; notice; late payment.**
- (a) A sole proprietorship or general partnership that applies for renewal of a State business license must submit an annual renewal fee in the amount of one hundred dollars (\$100.00) to the Secretary of State each year on the last day of the month in which the anniversary date of the effective date of the State business license occurs. Information on the annual renewal is to be current as of the date of filing.

(b) The Secretary of State shall, at least 90 days before the last day for filing an application for renewal of the State business license by a sole proprietorship or general partnership that holds a State business license, provide a notice to each person of the State business license fee due pursuant to this section and a reminder to file the application for renewal required pursuant to this section. The Secretary of State may give notice electronically by sending the notice to the e-mail address provided on the State business license application or renewal. Failure of any sole proprietorship or general partnership to receive a notice does not excuse the sole proprietorship or general partnership from the late fee imposed by subsection (c) of this section or the penalty imposed by G.S. 57E-3.

(c) If a sole proprietorship or general partnership fails to submit the annual State business license renewal fee required pursuant to this section in a timely manner, the sole proprietorship or general partnership shall pay a late fee in the amount of one hundred dollars (\$100.00) in addition to the annual State business license fee. The Secretary of State shall provide to the sole proprietorship or general partnership a written notice that includes a statement indicating the amount of the fees and penalties required pursuant to this section and the total unpaid balance. The written notice required by this section may be provided electronically by electronic mail or other electronic communication.

"§ 57E-8. Cancellation.

The sole proprietorship or general partnership must cancel the State business license within 30 days of ceasing to conduct business by filing a certificate of cancellation with the Secretary of State. The certificate of cancellation shall be on a form specified by the Secretary of State and shall be executed under penalty of perjury. Failure of the sole proprietorship or general partnership to file a certificate of cancellation on or before the renewal deadline for the State business license shall cause the entity to be liable for the renewal fee.

"§ 57E-9. Rules.

The Secretary of State may adopt such rules as are necessary to carry out the provisions of this section.

"§ 57E-10. Deposit of proceeds.

The Secretary of State shall deposit eighty percent (80%) of monies received pursuant to this Chapter into the General Fund. The remainder shall be deposited into a special revenue fund in the Office of the State Treasurer for the administration of this Chapter.

"§ 57E-11. Revocation of license; denial of new license.

(a) If a sole proprietorship or general partnership that holds a State business license fails to comply with a provision of this section or a regulation of the Secretary of State adopted pursuant thereto, the Secretary of State may revoke the State business license of the sole proprietorship or general partnership.

(b) If the registration is revoked, the Secretary of State shall provide written notice of the action to the sole proprietorship or general partnership that holds the State business license.

(c) The Secretary of State shall not issue a new license to a former holder of a revoked State business license unless the Secretary of State is satisfied that the sole proprietorship or general partnership has complied with the provisions of this Chapter and the rules of the Secretary of State adopted pursuant thereto.

"§ 57E-12. Appeal from Secretary of State's refusal to issue State business license.

(a) If the Secretary of State refuses to issue or renew a State business license, the person or general partnership on whose behalf the application for a State business license was submitted may, within 30 days after the date of refusal, appeal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the Court and with the Secretary of State requesting the Court compel the Secretary of State to issue a State business license. The petition filed with the Court must have attached to it the application for State business license registration and the Secretary's explanation for the refusal to issue a State business license. The appeal to the Court is not governed by Chapter 150B of the General Statutes, the

Administrative Procedure Act, and shall be determined by a judge of the Court upon such further notice and opportunity to be heard, if any, as the Court may deem appropriate under the circumstances.

(b) Upon consideration of the petition and any response made by the Secretary of State, the Court may, prior to entering final judgment, order the Secretary of State to issue a State business license or take other action the Court considers appropriate.

(c) The Court's final decision may be appealed as in other civil proceedings.

"§ 57E-13. Penalty for failing to obtain or renew State business license; enforcement; regulations.

(a) Every sole proprietorship or general partnership that is doing business in this State who willfully fails to obtain or renew a State business license and to pay the requisite fees shall be subject to a fine of not less than one thousand dollars (\$1,000) but not more than ten thousand dollars (\$10,000) to be recovered in a court of competent jurisdiction.

(b) Failure of a sole proprietorship or general partnership to timely renew their State business license in three consecutive years shall create a rebuttable presumption that the entity has willfully failed to renew their State business license.

(c) When the Secretary of State is advised that a sole proprietorship or general partnership is subject to the fine described in subsection (a) of this section, the Secretary of State may, as soon as practicable, refer the matter to the district attorney of the county in which the principal place of business of the sole proprietorship or general partnership is located or the Attorney General, or both, for a determination of whether to institute proceedings to recover the fine. The district attorney of the county in which the individual's principal place of business is located or the Attorney General may institute and prosecute the appropriate proceedings to recover the fine. If the district attorney or the Attorney General prevail in a proceeding to recover the fine described in subsection (a) of this section, the district attorney or the Attorney General is entitled to recover the costs of the proceeding, including, without limitation, the cost of any investigation and reasonable attorneys' fees.

(d) In the course of an investigation of a violation of this section, the Secretary of State may require an individual or employee of that individual, or any partner or employee of a general partnership, to answer any interrogatory submitted by the Secretary of State that will assist in the investigation.

(e) The Secretary of State may adopt rules to administer the provisions of this section.

"§ 57E-14. Public records and intragovernmental sharing of information between governmental agencies.

(a) The information provided in an application that relates to electronic mail addresses, federal employment identification numbers, and social security numbers shall be considered confidential information and shall not be subject to disclosure under Chapter 132 of the General Statutes.

(b) The Secretary of State may agree with the governing body of any county, city, or town for the exchange of information concerning any sole proprietorship or general partnership registered pursuant to this section. The Secretary of State may provide otherwise confidential information in such an exchange of information, provided that the local entity agrees that it will keep confidential all information that is confidential under this Chapter or any other provision of law.

(c) The Secretary of State shall, no less often than annually, transmit to the Government Data Analytics Center, the Division of Employment Security of the Department of Commerce, and the Industrial Commission a list of the businesses registered pursuant to this section of which the Secretary of State has a record. The list must include the mailing address of the business as reported to the Secretary of State and any other information requested by those agencies.

(d) The Secretary of State shall, no less often than annually, transmit to the Department of Revenue a list of the businesses registered pursuant to this section of which the Secretary of State has a record. The list must include the mailing address of the business, the federal Employment Identification Number or Social Security number, as applicable, as reported to the Secretary of State by the sole proprietorship or general partnership and any other information requested by that agency.

"§ 57E-15. Cooperation with Secretary of State.

The Department of Revenue, the Division of Employment Security of the Department of Commerce, and the Industrial Commission shall cooperate with the Secretary of State to develop and implement a program to publicize, educate, and inform the public about the requirements of this section."

SECTION 2. To achieve staggered license renewal dates, the Secretary of State may assign an expiration date for each business license issued to a sole proprietorship doing business in this State on or before the effective date of this act for a period of time that is more or less than a 12-month period. The license fee may be prorated so that it covers the time period for which it is issued.

SECTION 3. There is appropriated from the General Fund to the Office of the Secretary of State one million dollars (\$1,000,000) for fiscal year 2015-2016 to be used for the development and implementation of the Business Registration Program, enacted as Chapter 57E of the General Statutes, and for operating expenses related to the Program.

SECTION 4. Section 1 of this act is effective for taxable years beginning on or after January 1, 2017. The remainder of this act becomes effective July 1, 2015.